

???????? C-428/02

# Fonden Marselisborg Lystbådehavn

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Skatteministeriet ??? Skatteministeriet ??? Fondens Marselisborg Lystbådehavn

(?????? ?? Vestre Landsret

???? ???? ??????? ?????????????????? ??????????)

«???? ??????? ??? – ?????? 13, ?, ??????? ?? – ?????????? – ??????? ??????? – ??????????  
????? ??? ?? ???????? “??????????” – ?????? ?????????? ?????? – ?????????? ??????  
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?????????? ?? ?????? ?????????? J. Kokott ?? 14?? ?????????? 2004

?????? ?? ?????????? (????? ?????) ??? 3?? ?????? 2005

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1. ?????????? ??????? - ?????????? ??? ?????????? - ????? ??? ?????? -  
????? ?????? ?????? ?????? ?????????????? ????? - ?????????? ?????????????? ??? ??? ????  
????? - ?????????? ??? ?????????? ?????? - ?????? - ?????? ?????? ?????? ??????????  
????? ??? ?????? ?????????? ?????? ??? ??????

(?????? 77/388 ??? ????????????, ??? 13, B, ??)

2. ?????????? ??????? – ?????????? ??? ?????????? – ????? ?????? ?????? –  
????? ?????? ??? ?????????????? ??? – ?????????? ?????????????? ??? ??? ??? ???  
????? – ?????????? ?? ?????????? ?????? – ?????????? ?????? ??? ?????????? ?????? ??? ??  
????????? «?????????» – ?????? ??? «?????????» – ??? ???? ??????????,  
????????????????? ??? ??????

(?????? 77/388 ??? ??????????, ??? 13, B, ??, ??? 2)

1. ??????? 13, B, ??????? ?, ??, ??? ?????? ??????? 77/388, ??? ?????????????? ???  
?????????? ??? ?????? ????, ??? ??????? ?? ?????? ?????? ?????? ?????? ???????, ???  
?????????????? ?? ??? ?????? 92/111, ??? ?????? ?????? ??? ? ??? «????????? ??????»  
?????????? ?? ?????? ?????? ??? ?????????? ??? ?????????? ??? ???? ?????? ??? ??, ???  
?? ?????? ??? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

???? ???? ???? ?????????? ??? ??????, ??? ??? ?????? ?????? ?????????? ?????????? ??? ?????  
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????  
??? ? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????  
?????????, ?? ??? ?????? ?????????????? ??? ?????? ??? ?????? ??? ?????? ??? ??? ?????? ?? ??????????????.

(??, ??????? 34 ??, 36, ???????, 1)

2. ?? ?????? 13, B, ?????????? ?, ?????? 2, ??? ????? ??????? 77/388, ??? ??????????

???? ??????????? ??? ?????? ??????, ??? ??????? ?? ??? ????? ?????? ?????? ?????? ???????, ???  
?????????????? ?? ??? ?????? 92/111, ?? ?????? ?????????? ??? ??? ?????? ?????? ??? ???????  
???? ??? ?? ??????? ?????? ?? ?????????? «????????????», ?????? ?? ?????????? ???  
??? ?????? ??? ???? «?????????» ??? ?????????????? ??? ?????? ??? ?????? ??? ??????????  
??? ?? ?????????? ???, ?????????????????? ??? ??????.

(???. ??????? 44, 46 ??? 47, ??????. 2)

????????? ??? ?????????? (????? ????)

??? 3?? ?????? 2005 (\*)

«???? ?????? ??? – ?????? 13, ?, ??????? ?? – ?????????? – ?????? ?????? – ??????????  
????? ??? ?? ?????????? “????????????” – ?????? ?????????????? ?????? – ?????????? ??????  
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???? ?????? C-428/02,

??. ?????????? ?????? ??????? ?????????????? ?????????? ?????? ??? ?????? 234 ??,  
??? ?????? ?????? ?? Vestre Landsret (?????), ?? ?????? ??? 15? ?????? 2002, ???  
????????? ??? ?????????? ??? 26 ?????????? 2002, ??? ?????? ??? ??????

### **Fonden Marselisborg Lystbådehavn**

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**Skatteministeriet,**

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**Skatteministeriet**

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**Fonden Marselisborg Lystbådehavn,**

??. ?????????? (????? ????),

????????? ??? ??? A. Rosas, ?????? ???????, A. Borg Barthet, J.-P. Puissochet, J.  
Malenovský ??? U. Löhmus (??????), ???????,

?????? ??????????: J. Kokott

?????????: H. von Holstein, ?????? ??????????,

?????? ??? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? 23??  
????????? 2004,

????????? ??? ??? ?????????? ??? ??????????:

– ?? Fonden Marselisborg Lystbådehavn, ?????????????? ??? ??? L. Henriksen ??? M.

Andersen, advokaterne,

- ?? Skatteministeriet ??? ? ?????? ??????????, ??????????????? ??? ??? J. Molde, ?????????????? ??? ??? P. Biering, advokat,
  - ? ??????? ????????, ?????????????? ??? ??? ?. ????? ??? ?. ????????,
  - ? ??????? ??? ?????????? ??????????, ?????????????? ??? ??? E. Traversa ??? T. Fich,

??? 14?? ??????? 2004,

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1 ? ??????? ???????? ?????????????? ?????????? ?????? ??? ?????????? ??? ?????? 13, ?,  
????????? ??, ??? ?????? ??????? 77/388/??? ??? ??????????, ??? 17?? ????? 1977, ???  
????????????? ??? ?????????? ??? ?????? ??????, ??? ?????????? ?? ??? ????? ?????? ??????  
????????? – ????. ?????? ?????? ?????? ?????????????? ?????: ?????????? ?????????? ??? (??  
???. ??. 09/001, ?. 49), ??? ?????????? ?? ??? ?????? 92/111/??? ??? ??????????, ???  
14?? ?????????? 1992 (?? L 384, ?. 47, ??? ????: ??? ??????).

2 ? ?????? ??? ??????????? ??? ??????? ??? ????????, ???????????, ?????? ???  
Fonden Marselisborg Lystbådehavn [????????? ??? ?????? ??? ?????? ?????????? ???  
Marselisborg (?????), ??? ??? FML] ??? ??? Skatteministeriet (????????? ??????????)  
?????????????), ??? ?????? ????? ??? ?????????? ??? ??? ??? FML ??????? ?? ??? ?????  
????? ?????????????? ??? (?? ????: ???) ?? ??????? ??????????, ????? ?????? ???  
????????? (??????), ?????? ?????????????? ?????? ??? ?????? ??? ?? ?????????? ???  
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3      ??????? ?? ??? ??????? ?????????? ??????, ?????, ???? ?????? ??????????, ?????? ????,  
???? ?????? ?????? ?????? ?????? ?????????? ??? ???? ?, ?? ?????? ??? ?????????? ??????????  
??? ?????? ?????? ?? ??? ?? ?????? ???.

4      ????. ?? ?????? 2, ??????????? 1, ??? ????? ???????, ????. ?? ?????????? «??  
?????????? ?????? ?? ???? ?????? ??????????, ??? ?????????????????? ?? ?????????? ??????  
?? ?????????? ?? ????? ?? ?????? ?? ??????????? ?? ???, ??? ?????? ?? ??? ?? ?????????? ??  
?????»,

5 ?? ?????? 4, ??????????? 1 ??? 2, ??? ?????? ??????? ?????????? ?? ????:

«1. ?????????? ?? “?????????? ???? ????” ?????????????? ????, ??? ??????????????

2. ??????????? ????????????, ??? ???? ?????? ??? ?????????? 1, ??? ???? ??  
?????????????? ??? ??????????, ??? ?????? ? ??? ?????????? ??????????.

? ?????????????????? ??? ?? ?????????????? ??????????, ??? ?????????? ?????????????? ?????  
????? ??? ?? ?????????????? ??? ?????????? ?????????? ???? ?????????????? ???  
????. ?? ?????????????? ?????????????? ?????????? ???? ?????????????? ?????????? ????  
??????, ??? ?? ?????? ?????? ?????????? ?????? ?????????? ?????????? ??????????»

6 ?? ?????? 13, ?, ?????????? ?, ??? ?????? ???????, ?? ?????? ?????????????????? ??? ??  
? ?????, ?? ?????????? «?????????», ?????? ?? ????:

«?? ??? ?????????? ??? ?????? ?????????? ??????????, ?? ?????? ??? ??????????????, ??? ??  
????????????? ??? ??????, ??? ?? ?????????????? ??? ?????? ??? ?????? ??? ?????? ???  
????????????? ??? ?????? ?????????? ??? ?? ?????????? ?????????? ?????????? ??????????,,  
????????????? ??? ??????????:

[...]

?) ??? ?????????? ?????????, ??????????:

1. ??? ?????? ?????? ?????????? ??????????, ??? ?????????? ??? ?? ?????????? ??? ??  
?????, ??? ?????????????????? ??? ?????? ??? ?????????? ?????????? ?????? ???? ?????? ???  
????????????? ??????????, ?????????????????? ??? ?? ?????????? ?????????? ?????????? ??????????  
??????, ?????????????????? ?????????? ??? ??????????.

2. ??? ?????????? ??? ?? ??? ?????????? ??????????.

3. ??? ?????????? ?????????? ??? ?????????? ?????????? ?????????? ??????????????????.

4. ??? ?????????? ??????????????.

? ? ?????? ??? ?????????? ?? ?????? ?????????? ?????????? ?????? ?? ?????? ?????????? ??? ??  
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[...]»

? ?????? ?????????? ??????

7 ?? ?????? 13, ?????????? 1, ?????? 8, ??? momsloven (????? ???? ???) ?????? ?? ????:

«?? ?????????? ??? ?? ?????????? ?????????????? ??? ?? ???:

[...]

8) ? ??????????, ? ?????? ???????, ?????? ??? ? ?????? ??????????, ?????, ??????????  
????????? ??? ?????????? ??? ?????? ??? ?????????? . ? ?????????? ??? ??????????????,  
?????????, ?? ?????? ?????? ?????? ?????? ?????????? ? ?????????? ??????????????, ??  
????????? ?????? ?????? ?????????????? ?? ?????? ?????????? ??? ?????? ??????????  
????????? ??? ??? ???, ?? ?????? ?????? ?????? ?????????, ?????????? ??? ?????????? ??????  
??? ?? ?????? ?????? ?????? ?????????? ??????????»

? ?????? ??? ?????? ?????? ??? ?? ?????????????? ??????????

8 ? ?????????? ??? ?????? ??? Marselisborg ??? ?????? ??? FML. ?? ?????????? ???  
?????? ??? ?? ??????????????, ?????? ???, ?? ?????? ?????? ?????????? ?????????? ??? ??  
??? ?????? ??? ??????, ??? ?? ?????????? ???.

9 ??? ??? ?????????????? ?????? ??? ?????? ??? ?? ?????????? ??? ??? ??? ???, ??? ???

? ??????? ?????, ???? ???? ??? ?????????? ???????, ?????? ??? ?? ? ?????????????? ?????.

10 ?? ?????????? ??????? ??????????, ? ??????? ?????? ?? ??????? ?????? ??????? ??????? ???????  
??? ?????????????? ?????? ??? ?? ??????? ?????? ?? ?????? ?????? ?????? ?????????????? ???  
??????, ???? ???? ?? ?????????? ??? ?? ??????. ?? ?????? ?????? ?????? ?????????????? ???  
?????? ??? ??????. ??????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????????????? ???  
?? ?????????? ?????? ??? ?????? ??? ?????????? ?? ?????? ?? ? ? ? ? ? ? ? ? ? ? ? ? ? ?  
?????? ??????? ?. ?? ? ??????? ??? ?????? ?????? ??? ?????? ??? ?????????? ?? ?  
????????????? ??? ?????? ?????????? ?????? 24 ????, ? ???? ???? ?????? ?????? ???  
?????? ?????????? ??? ????????????

11 ?? ??????? ?????? ??????? ?????????? ?????? ?????????????? ?????? ?? ??????? ??????? ???  
?????? ?????? ?? ?????????? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???  
?????? ????, ?? ?? ?????? ??? ??????. ??????????, ??? ?????????? ?????? ??  
????????? ?????????? ?????? ?????????????? ?????? ?????? ?????? ??? ?????? ??? ??????. ??????????,  
?? ?????? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ??????????.

12 ?? ?????????? ?????????? ??? ??????? ???????, ?? ?????? ?????????????? ??? ??,  
???? ?? ?????????? ? ??????? ????????. ? ??????? ?????????? ???, ????????,  
????????? ???, ?????????? ??? ?????????? ??? ?????????? ??? ?????? ???.

13 ? ??????? ??? ?????? ??????? ??????? ?????????? ?????? ??? ?? ?????? ?????????? ???  
????????? ??? ?????? ?????? ??? ?????? ??? ?? ? ?????????? ????. ??' ??? ??  
????? ?????????? ??? ?????????? ???.

14 ??? ?????? ?? ??????? ?????? ??? ??????, ??? ?????? ?????? ?????? ??? ?????? ???  
?????? ?? ??????? ?????? ?????????? ?????? ?????? ?????????? ??? ?????? ????. ? ??? ??  
????????? ?? ?? ???????, ?????? ?? ??? ?????? ??? ?????? ?????? ??? ?????? ?????????? ??  
??????, ?? ?????? ?????? ??????????, ? ?? ??????? ??? ?????? ?????? ?????? ??? ?? ??  
????????? ??? ?? ?????????? ?? ?????? ???.

15 ? ??????? ??? ?????? ?????? ?????????? ??? ??????? ???, ?????????? ?? ?? ?????? ???  
????????? ?? 1999 ?? FML ??? ?????????? ?????? ??? ?????? ??? Århus (????), ??? ?  
????????? ?????? ??? ?? ?????? ??? ?? ?????????? ?????? ?????????? ??? ?????? ??? ??????  
????????? ??? ?. ?? FML ?????????? ??? ?????? ??? ?????? ??? Landsskatteret  
(?????).

16 ?? ?? ??????? ??? ?? 6?? ?????????? 2000, ?? ?? ??? ?????????? ?????? ??? ?  
?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?  
?? ?????????? ??? ?? ?????? 13, ?????????? 1, ?????? 8, ??? momsloven, ??? ?? ??? ??  
?? ? ?????????? ??? ?? ?????? ??? ?????? ?? ?????? ?????? ?????? ??? ?????? ??  
?????? ??? ? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ??????????  
?????????, ?? ??? ?????? ??????, ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ???  
????????? ?????? ?????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

17 ???????, ??? ?????? ??? ?????????? ??? ??????? ??? ?????? ??? ?? ??????, ?? Landsskatteret  
?????? ??? ? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???  
?? «?????? ??????» ??? ??? ?????? ??? ?????? 13, ?????????? 1, ?????? 8, ???  
momsloven. ??????????, ??? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ???  
?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???  
?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ???  
?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

«????????? ??? ???? ?? ?????????? ?????????????», ??? ?? ??? ???? ?? ?????????? ???  
????? ??? «????????????» ??? ?? ??? ???? ?? ?????? 13, ?, ??????? ??, ?????? 2, ???  
????? ??????.

18 ??? ?? FML ??? ?? Skatteministeriet ??????? ????? ?? ?? ??? ?? ??? ??????????  
??? Landsskatteret ??????? ??? Vestre Landsret. ?????????? ??? ? ??????? ??? ???????,  
??? ?????? ???????, ?????? ??? ?????????? ??? ?????? 13, ?, ??????? ??, ??? ??????  
??????, ?? Vestre Landsret ?????????? ?? ?????????? ?? ?????????? ??? ?? ??????? ??  
????????? ?? ?????????? ?????????? ??????????:

«1) ??? ?? ????? 13, ?, ??????? ??, ??? ????? ?????? ??? [...] ??? ?????? ??? ? ???  
“?????? ??????” ??????????? ?? ??????? ?????? ??????????????, ? ????? ???????????  
??? ????? ??????? ????? ?? ???????, ????? ?? ??? ??? ?????????????? ??? ???????????  
????? ??? ???;

2) ??? ?? ????? 13, ?, ??????? ??, ?????? 2, ??? ????? ?????? ??? ?????? ??? ??  
“køretøjer” (“????????”) ??????? ?? ???;

### ??? ??? ?????? ??????????

19 ?? ?? ?????? ?? ???????, ?? ?????? ?????????? ?????? ?? ?? ?????? 13, ?, ??????? ??,  
??? ?????? ??????? ??? ?????? ??? ?????? «?????? ??????» ??????????? ??  
?????? ?????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
??? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???  
????????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???.

????????????? ??? ?????????????? ??? ??????????

20 ?? FML ?????????? ??? ?????????????? ???, ??? ?????????? ?????? ??? ??????????  
?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ?????????? ???,  
?????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??  
?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ???' ???, ?  
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????????? ???  
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????????? ???  
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????????? ???  
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??  
????????? ???.

21 ??? ?????? ?? ?????? ??? ???????, ?????????? ??? ?? ?????????? ??????????????  
????????? ?????? ??? ?????????? ??? ?? ?????? ??? ?????? ?? ?????????? ??? ?????????? ??  
?????????????.

22 ? ?????? ?????? ??? ?????? ??? ? ?????? ?????? ?????? ?????????? ??? ?????? ??  
????????? ?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? 13, ?, ??????? ??, ??? ??????  
??????, ??? ?? ?????????? ??? ?? ?????? ??? ?????? ?????????? ?????? ?? ?????????? ???  
?????.

23   ????? ??? ?????????? ????, ?????? ??? ?? ???? ?????????? ?????????????? ??????? ??  
????????????? ?? «??????», ???? ??? ?????? ?? ??????? ?????? ??????? ?? ???? ?? ?????? ??  
????? ??? «??????» ???? ??? ?????? ?? ?????? ???????, ? ?????? ??? ?????????????? ??  
????? ??? ?? ?????? ?? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??  
????????? ???????, ?????? ?? ?????????????? ?????? ??? ?????? ?????? ??? ?????????????? ??  
? ?????? ??????, ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??  
?? ??????. ????, ? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??  
?? ??????.

24   ?????????, ? ?????? ?????? ????, ?????? ??????????????, ?? ?????????? ???????,  
??? ?? ?????????? ???? ?????? ??? ?????? ?? ?????? ??? ???????, ?????? ??  
????????????? ?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??????.

25   ? ?????????? ?????????? ??????, ???? ??? ? ?????? ??????????, ???? ? ?????? ???  
«????????? ??????» ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???  
????????? ?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????.

26   ? ?????????? ??? ?????????? ?????????? ?????????? ??? ?????? ??? ?????? ???  
????????? ??? «?????? ??????», ???? ?????? ?????? ?? ??????????, ?????????? ???  
????????? ??? ?????????? ?????????? ????, ??? ?????????? ??? ?? ??????????  
??? ??????, ?????? ?????????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??????  
????????, ? ?????? ?????? ??? ?????? ??? ?????? ?? ?????????????? ?????????? ??????  
?? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??  
? ?? ?????? ?????? ??? ?????? ??? ?????????????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ?????? ??? ?????? ??? ??????.

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27   ????? ??? ?????? ??????????, ?? ?????????????? ??? ?? ?????? 13 ??? ?????? ???????  
????????? ?????????? ?????????? ??? ?????? ??? ?????????? ??????, ???? ?????? ???????  
????????? ?? ?????? ?????????? ?????? (??, ?????????? ??? 12?? ?????????? 2000, C-  
358/97, ?????????? ??? ?????????? 2000, ?. I-6301, ?????? 51- ??? 16?? ??????????  
2003, C-315/00, Maierhofer, ?????? 2003, ?. I-563, ?????? 25- ??? 12?? ?????? 2003, C-  
275/01, Sinclair Collis, ?????? 2003, ?. I-5965, ?????? 22, ??? ??? 18?? ?????????? 2004, C-  
284/03, Temco Europe, ??? ??? ?????? ?????? ?????????? ??? ??????, ?????? 16).

28   ????????? ?????? ??? ?????? «?????? ??????» ??? ?????? 13, ?, ?????????? ??, ??  
????? ??????, ? ?????? ??? ?????? ?? ?????????? ?? ?????????? ??? ?? ??? ?????? ?????? ??  
????? ??????????, ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??????, ??????????  
????????? ??? ratio legis ??? ?????????? ??? ?????? ? ?????? ??? ?????? ?????? (??.,  
??? ??? ?????? ???, ?????????????? ?????? Temco Europe, ?????? 18).

29   ??????, ?????????? ??? ?? ?????????? ??? ?????????????? ??? ?? ?????? 13 ??? ?????  
?????? ?????????? ?????????? ??? ?? ?????? ??? ?????? ?????? ?? ??? ?????? ??? ??  
????????? ??? ?? ?????? ?????? ?????????? ?????????????? ?? ?????????? ?????? ???  
????????? ???, ?????? ?? ?????????? ?????? (??., ?????? ???, ??????????  
????????? ??? ?????????? 2000, C-359/97, ?????? ??? ?????????? ?????? 2000, ?. I-6355, ?????? 64, ??? Sinclair Collis,  
??????????, ?????? 23).

30   ?? ?????? ??????????, ?? ?????????? ??? ?????? ?? ?????? ?????????, ??? ??? ?????? ??  
????? 13, ?, ????????, ??, ??? ?????? ??????, ?? ?? ?????? ??? ?????? ? ??????????

????????? ??? ???????, ?????? ??????????? ??? ??? ?????????????? ?????? ??? ???????, ??  
?????? ?? ??????? ??? ?? ?????????? ?????? ?????????????? ??? ?????? ??? ?? ???????  
??? ??????????? ??? (??., ??? ??? ?????? ???, ?????????? ?????????? ??? ???????,  
?????????????, ??????? 52 ??? 57- ??? 9?? ?????????? 2001, C-409/98, Mirror Group,  
?????? 2001, ?. I-7175, ????? 31- ??? 4?? ?????????? 2001, C-326/99, «Goed Wonen»,  
?????? 2001, ?. I-6831, ????? 55, ??? Temco Europe, ???????????, ??? 19).

31 ??? ?????????????? ???, ??? ?????? ??? ?????? ??? ?????? ???, ?? ?????? ?????? ??? FML  
??? ??? ??????? ??? ?????? ??? ??????, ?? ?????? ?????? ??? ?????????? ?????? ??????  
??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?????????? ??? ?????? ???  
????????? ??? ??? ?????? ??? ?? ?????? ??????????. ?? ??? ?????? ??? ?? ??? ??? ???  
?????? ??? FML ??? ??? ?????? ??? ?????? ?????????????? ??? ??? ??? ?? ???????????,  
??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????????????? ??? ??? ??? ?????? ??? ?????? ???  
????????? ??? ?? ?????? ??????, ?????? ? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??  
??? ??????. ?????????? ??? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
??? ?????? ?????????? ?? ?????????? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???  
??????.

32 ???????, ??? ?? ????? ?????????? ??? ?????? ?????? ?????? ?????? ?? ?????????????? ??? ??,  
??????????, ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ???  
????????? ?????.

33 ?? ??? ??? ?????? ??? ??????, ?????????????? ??? ?? ??? ?????????????? ??? ?????? ???  
??? ?????????? ??? ?????? ?????? ??????.

34 ?? ??? ??? ?????? ??? ?????, ??? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ???????  
FML ?????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ????????. ??  
????????? ??? ? ?????? ?????? ?????????? ?? ?????????? ?? ??? ?????? ??? ?????????? ???  
????????????? ??? ?? ?????????? ??? ?????? ??? ?????????? ?????????????? ?????????? ???.  
??????????, ?? FML ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??????????????????  
??? ?????????????? ?????? ????. ? ?????? ?????? ??? ?????? ??? ?????? ?????????? ??????????  
????? ??? ?????????????? ?????? ??? ?? ?????? ??????????. ? ?? ???, ?????????? ??? ??? ???,  
????????? ?????????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???.

35 ??????, ??? ?????? ?????????? ? ?????? ?????????? ??? ?????? ?????????? 32 ??  
????????? ???, ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? 13, ?, ?????????? ???, ???  
????? ??????, ??? ?????? ??? ?????? ??? ?????????? ?????????? ??? ?????? ?????????????? ???  
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???.

36 ???????, ??? ?????? ?????? ??? ?????? ?? ?????? ?? ?????? ??? ?????? ??? ?? ?????? 13, ?,  
????????? ??, ??? ?????? ?????? ??? ?????? ?? ?????? ??? ?????????? ??? ?????? ??? ?? ?????? «??????»  
????????? » ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?? ?????? ??? ?????? ???  
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ???.

??? ??? ??????? ??????????

37 ?? ?? ?????? ?????? ???, ?? ?????? ?????????? ??? ?????? ?? ? ??? «køretøjer», ???  
????????????? ??? ?????? 13, ?, ?????? ??, ?????? 2, ??? ?????? ??????, ??????????????  
?? ???.

????????????? ??? ?????????????? ??? ???????????

38 ?? FML ??????????? ??? ?? ???? 15, ?????? 2, 28?, ?????? 2, ??????? ??, ?? 28??, ?????? 4, ??????? ?? ?? ???? ?????? ?????? ?????? ?????? ?????? ?????? ?? ? ???????.  
????? ?????? ?????? ?? ?????? ?????? ?????? «?????????? ???» ??? «?????????».  
????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??  
??????????, ?? ??????????? ??????, ?? ?????? ?.??., ?????????????? ???? «?????????»  
??????. ????????, ?? ?????? «?????????» ?????????????? ??? ?? ?????? ??  
????????? ?????? ?????? ??????. ? ??? «køretøjer» («?????????») ??? ?????? 13, ?,  
????????? ??, ??? ?????? ?????? ??????, ???????, ?????? ?? ?????? ?????? ?????? ???  
??, ???????, ??? ?????? ?????? ?????? ?? ?????? ?????? ?????? ??????.

39 ? ?????? ??? ? ??????? ?????????? ??????? ??? ? ??? «køretøjer» («?????????») ???  
????? ?? ?????????? ??????. ? ??? ?????? ?????, ???????, ?? ?????? ?????? ??????  
????? ?? ?????????? ??? ?????? ??? ??? ?????? ?? ??? ??? ???, ?????????????????? ???  
?????.

40 ? ??????? ?????????? ???, ??? ???? ?????? ?????? ???, ??? ???? ?????? ?????? ???  
????????? ?????????? ???, ??? ???? 13, ?, ??????? ??, ?????? 2, ??? ???  
??????, ? ??? «køretøjer» («?????????») ??? ?????????? ?????? ?????????????? ???  
????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????  
??????, ?????????????????? ??? ??????. ?????? ?????? ?????? ?? ??? ?????? ??????  
??????????, ??? ?? ??? ?????? ??????? ?? ??? ??? ??? ?????????? ??????????????.

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41 ?? ?????????????? ??? ?????? ?????? ?????? ??? ???? ?? ???? 13, ?,  
????????? ??, ?????? 2, ?????????? ?? ?????? ???? «køretøjer» («?????????»), ???  
????? ???????????. ??? ?????? ?????? ?????? ???? ???????, ??????? ?????? ???????, ??????  
??? ?????? ??? ?? ???????, ?? ???????, ?? ???????, ?? ???????, ?? ???????????, ??  
????????? ??? ?? ?????????? ???????, ?????????? ?????? ??? ?????? ??? ??????  
???? ?? ?????, ?????????????????? ??? ?????????? ??? ?????? ??? ??????. ?????????, ???  
??????, ??? ?? ???????, ?? ???????, ?? ?????????? ??? ?? ?????????? ???????, ???????  
???? ?????????? ??? ?? ?????????? ???????, ? ?????? ?????????? ??? ?? ?????? ??????  
?? «????????? ?????????? ???». ??????????, ? ?????? ??? «køretøjer» ?????????? ???  
????????? ?????? ?????? ???.

42 ??????, ??? ?????? ?? ?????????? ???, ??? ?????? ??????????, ?? ??????????  
????????? ?????? ?? ?????????? ?????????? ?????????? ??????????, ??? ??????  
?? ?????????? ?? ??? ?? ?????? ?????? ?????? ??? ??? ?????? ??? ?????????? ??????????  
??? ?????? ?????????? ?????? (??., ?????? ???, ?????????? ??? 27?? ?????? 1990, C-  
372/88, Cricket St Thomas, ?????? 1990, ?. I-1345, ??? 19, ??? ?? 14?? ??????????  
2000, C-384/98, D., ?????? 2000, ?. I-6795, ??? 16).

43 ??? ?????? ?? ??????? ?????? ??? ?? ?????????? ???????????, ?? ?????? 13, ?, ??????  
??, ?????? 2, ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???  
?? ?? ?????? ?????? ??? ?? ?????? ?????? ??????. ?????, ???????, ??? ?????? ??? ?????? ??? ??  
????? ?????? ??? ?????? ?????, ?? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??  
????????? ???????, ?????? ??? ?????? ?????????? ?????? ??????????. ? ?????? ??? ??  
????? ?????? ?? ?????????? ?????? (??, ?????? ??? 12?? ?????????? 1998, C-  
346/95, Blasi, ?????? 1998, ?. I-481, ??? 19).

44 ??????, ? ??? «køretøjer» («?????????») ??? ?????????????? ??? ?? ??? ??????  
????? ?? ?????????? ?? ??? ??? ?????????? ???, ?????????????????? ???

??????.

45 ??????????, ? ??????? ?????? ??? ?????? ??? ?????????????????? ??? ?????? ??? ?????????? ??????????  
????????????? ??? ??????????? ??? ?????, ??? ????? ?????????????? ?????? ?? ?????? ??? ?????????? ??????????  
?????????? ??????????? ??? ?????????? ?????? ?????? ?????? ??? ?????? ?? ?????? ??? ???????,  
????????????? ?????????? ??? ?????????? ??? ?????????? ??? ???????????, ??? ?????????? ???  
????????????? ??? ?????? ?????????? ??? ?????? ?????????? 51 ??? ?????????? ???, ?????? ??? ???  
??????????, ??? ????? ?????????? ??????????, ??? ?????? ?????? ??? ??? ??? ?? ??????????????  
? ??????? ??? ??? ??? ??? ?????????? ??? ?? ?????? ??????????, ??? ?????? ??  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????????? ??? ??? ?????????? ???  
????????? ??? ?????? ???.

46    ??? ??? ??????? ??????, ?????? ??? ?????? ??? ?????? 13, ?, ?????????? ?, ??? ????  
???????, ? ?????? 2 ??? ??????? ??????, ??? ?????????? ??? ??? ?????? ??? ?????? ??? ??????  
???? ??? ???? «????? ??? ??? ?????????? ??????????????», ?????? ?? ?????????? ???  
??? ?????? ??? ????????????, ?? ????, ??? ?????? ??? ??? ?? ?????????? ??????????  
?????, ?????????????????? ??? ??????.

47      ?????? ??? ????????????????, ??? ?????? ?????? ?????? ?? ?????? ?? ?????? ??? ?????????? ??? ??  
????? 13, ?, ??????? ??, ?????? 2, ??? ????? ?????? ?????? ?? ?????????? ??? ?????? ??? ?????.  
????? ??? ???? «køretøjer» («?????????») ?????????? ?? ??????.

???? ???? ?????????????? ????????

48    ?????????? ??? ? ??????? ?????????? ??? ?? ??? ????? ?????????? ??? ?????? ?????  
??? ?????????? ?????????????? ??? ?????? ?????? ??? ?????? ?????? ??????????, ?' ????  
????????????? ?? ?????????? ??? ??? ?????????? ??????. ?? ?????? ??? ????? ??????????  
??? ?? ?????????? ?????????????? ??? ?????????? ?????? ??? ??? ?? ??? ????? ?????????, ???  
?????????????.

???? ???? ??????? ???????, ?? ??????????? (????? ????) ????????????:

1) ?? ?????? 13, ?, ????????, ??, ??? ?????? ??????? 77/388/??? ??? ???????????, ???  
17?? ?????? 1977, ??? ?????????????? ??, ?????????? ?????? ?????????? ??? ?????? ?????, ???  
????????? ?? ??? ????? ?????? ?????? ?????????? – ??? ?????? ?????? ?????? ??????????????  
?????: ?????????? ?????????? ???, ??? ?????????????? ?? ??? ?????? 92/111/???  
??? ??????????, ??? 14?? ?????????? 1992, ?????? ?? ?????????? ??? ??? ??? ?????  
??? ? ??? ?????? ?????? ?????? ?????????? ?????????? ?? ?????? ?????? ??? ??????????  
??? ? ??? ?????? ?????? ??? ???, ??? ?????? ??? ?????? ??? ??? ?????????? ??? ?? ???  
?????? ??? ?????? ?????? ??? ??????.

2) ?? ?????? 13, ?, ??????? ??, ?????? 2, ??? ?????? ??????? 77/388, ????  
?????????????? ?? ?? ?????? 92/111, ?????? ?? ??????????? ?? ?? ?? ?????? ??? ?  
??? «køretøjer» («??????????») ??????????? ?? ????.

(???????????)

\* ??????? ??????????????: ? ??????.